

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of WILLIAM WHITE and DEPARTMENT OF THE NAVY,
NAVAL SHIPYARD, Philadelphia, PA

*Docket No. 00-1796; Submitted on the Record;
Issued February 7, 2002*

DECISION and ORDER

Before MICHAEL J. WALSH, WILLIE T.C. THOMAS,
MICHAEL E. GROOM

The issue is whether the Office of Workers' Compensation Programs properly reduced appellant's compensation based on his ability to earn wages as a computer support analyst.

On March 13, 1981 appellant, then a 34-year-old warehouseman, crushed his left hand at work when a forklift malfunctioned and pinned his hand between the forklift and roadway. He underwent emergency restorative surgery of his hand and joints through revascularization and arthroplasty implantation. The claim was accepted for a crush injury of the left hand, partial amputation of a finger and the third digit sympathectomy, which was performed on March 22, 1994. Appellant stopped work and he returned to limited clerical duty with intermittent periods of disability until the March 1994 surgery. Thereafter, disability was approved through August 20, 1994 and appellant was placed on the periodic rolls.

In a September 7, 1994 work capacity evaluation, Dr. Lawrence Schneider, a Board-certified orthopedic surgeon and appellant's treating physician, indicated that he had reached maximum medical improvement. He indicated that appellant could return to work eight hours a day with restrictions of lifting no more than 20 pounds, no repetitive motion with the left hand and wrist and no climbing. On or about October 27, 1994 appellant was released to full-time light duty.

On or about November 29, 1994 the employing establishment advised that no light-duty position was available to appellant. In 1995, the Office developed a rehabilitative training program, in which appellant was enrolled in a computer technology program at the Computer Learning Center in Philadelphia, Pennsylvania. Appellant successfully completed the program in October 1996. On April 29, 1997 the Office requested placement services for appellant from his rehabilitation counselor in positions of computer systems hardware analyst and user support analyst. Appellant's counselor informed the Office that appellant had participated in vocational efforts and positions in the noted areas were found vocationally and medically suitable and

available in appellant's area. However, on August 8, 1997, rehabilitation efforts were closed as unsuccessful.

On March 17, 1998 the Office proposed to reduce appellant's compensation on the grounds that the position of computer system hardware analyst reasonably represented his wage-earning capacity. In a decision dated May 7, 1998, the Office reduced appellant's compensation based on his wage-earning capacity in the constructed position. Appellant disagreed and requested an oral hearing, after which an Office Hearing Representative remanded the case back to the Office on December 10, 1998 for further development, finding that the Office had failed to sufficiently demonstrate that appellant could perform the duties of the computer analyst position.

The Office sought clarification from the rehabilitation counselor regarding appellant's skills. On April 15, 1999 the counselor forwarded to the Office a letter dated April 15, 1999 from Marsha Sall, Director of Education at the Computer Learning Center, who stated:

"This is to certify that [appellant] has received the proper training from the Computer Learning Center to qualify him to perform the job of User Support Analyst ... as described by the *Dictionary of Occupational Titles*. I am familiar with this job description and the general educational requirement levels required to qualify for the position. [Appellant] has the reasoning, mathematical and language skills necessary to perform this job. The Associate's Degree in specialized technology that [appellant] received from Computer Learning Center, Inc. is 1500 hours and equivalent to a traditional two-year associate degree program."

The rehabilitation counselor included a copy of the user support analyst job description, appellant's course outlines and academic record which indicated that he obtained a 3.86 grade point average with all A's and one B. The job description provided that the user support analyst position mainly involved investigating and resolving computer software and hardware problems of users. The counselor noted that Ms. Sall indicated that appellant received high marks in MS-DOS and applications, basic electronics, solid state devices, digital circuit fundamentals, microprocessors and microcomputer hardware and troubleshooting. The counselor stated that Ms. Sall's letter provided the necessary documentation to show that appellant was qualified to work as a user support analyst.

On April 20, 1999 the Office proposed to reduce appellant's compensation based on the determination that the user support position represented his wage-earning capacity. In the proposed decision, the Office noted that Dr. Schneider reported in an April 7, 1999 work-restriction evaluation that appellant was capable of working eight hours a day with restrictions of reaching, twisting, operating a motor vehicle, pushing, pulling or lifting greater than five pounds on the left. He further indicated that appellant had a 60 percent impairment in his left hand and should only use it as an "assistive" hand.

By decision dated June 17, 1999, the Office reduced appellant's compensation on the grounds that the position of user support analyst represented appellant's wage-earning capacity.

On June 21, 1999 appellant requested another oral hearing, which was held on November 18, 1999. He testified that he was not adequately trained for the position, in that he only learned computer theory and was not knowledgeable in Windows 95, Excel, Works and Power Point; nor was he knowledgeable in using diagnostic software, fixing computers, programming or the Internet. Appellant further testified that he had been unsuccessful in obtaining employment, due in part to his loss of hearing, hand deformity and age.

By decision dated February 9, 2000, an Office hearing representative affirmed the June 17, 1999 decision, finding that appellant had appropriate educational, vocational and medical background to perform the duties of user support analyst.

The Board finds that the Office properly reduced appellant's compensation based on his ability to earn wages as a user support analyst.

Once the Office has determined that an employee is totally disabled as a result of an employment injury, it has the burden of justifying a subsequent reduction of compensation. If the employee's disability is no longer total but is partial, appellant is only entitled to the loss of his wage-earning capacity.¹

Wage-earning capacity is a measure of the employee's ability to earn wages in the open labor market under normal employment conditions given the nature of the employee's injuries and the degree of physical impairment, his or her usual employment, the employee's age and vocational qualifications and the availability of suitable employment."² Accordingly, the evidence must establish that jobs in the position selected for determining wage-earning capacity are reasonably available in the general labor market in the commuting area in which the employee lives. Generally, efforts to reemploy an injured worker are focused on reemployment possibilities with the employing establishment.³ Where reemployment with the employing establishment is not possible, the vocational rehabilitation counselor assists in either additional job training or in job placement efforts. Where vocational rehabilitation efforts are unsuccessful, Office procedures instruct the vocational rehabilitation counselor to identify three positions from the Department of Labor's *Dictionary of Occupational Titles* and obtain information from the state employment service with respect to the availability and wage rate of the position.⁴ The procedures provide for the claims examiner to select one of the positions in view of such factors as appellant's skills, aptitude, mental alertness, personality factors, etc. and to determine the medical suitability taking into consideration medical conditions due to the accepted work-related

¹ *Pope D. Cox*, 39 ECAB 143 (1987).

² *Samuel J. Chavez*, 44 ECAB 431 (1993); see 5 U.S.C. § 8115(a); 2 A. Larson, *The Law of Workmen's Compensation* § 57.22 (1989); Federal (FECA) Procedure Manual, Part 2 -- *Claims, Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814 (December 1993).

³ Federal (FECA) Procedure Manual, Part 2 -- *Claims, Reemployment: Vocational Rehabilitation Services*, Chapter 2.813.6(b) (December 1993).

⁴ See *Carla Lechter*, 46 ECAB 452 (1995); *Harold D. Snyder*, 38 ECAB 763 (1987); see also Federal (FECA) Procedure Manual, Part 2 -- *Claims, Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.8 (December 1995).

injury and any preexisting medical condition. Medical conditions arising subsequent to the work-related injury or disease are specifically excluded from consideration.⁵ Finally, application of the principles set forth in the *Shadrick* decision will result in the percentage of the employee's loss of wage-earning capacity.⁶

In the present case, the Office contacted appellant's employing establishment to determine the feasibility of returning him to work in a limited-duty capacity. As appellant was not able to return to work at the employing establishment, the Office properly referred him for vocational services. The rehabilitation counselor reviewed appellant's computer education, vocational aptitude and, based on a labor market survey of Philadelphia, Pennsylvania, concluded that the position of user support analyst was reasonably available. The physical demands and wage rates of the position were noted and deemed appropriate.

The medical evidence of record establishes that the duties of user support analyst were within appellant's medical restrictions and vocational capability. Further, the position of user support analyst is based on customer service and consultation and requires investigating and resolving computer software and hardware problems of users. The job further entails communication with users, programmers and vendors regarding hardware and software systems, evaluation and training. These physical and vocational tasks conform with Dr. Schneider's work restriction evaluations and Ms. Sall's report that appellant had been properly trained in MS-DOS and applications, basic electronics, solid state devices, digital circuit fundamentals, microprocessors and microcomputer hardware and troubleshooting. In a September 7, 1994 work-restriction evaluation, Dr. Schneider stated that appellant could return to full-time work with restrictions noted as: Lifting no more than 20 pounds, no repetitive motion with the left hand and wrist and no climbing. In an April 7, 1999 work restriction evaluation, Dr. Schneider stated that appellant could work eight hours a day with restrictions of reaching, twisting, operating a motor vehicle, pushing, pulling or lifting greater than five pounds on the left and only use his left hand as an assistive hand. Ms. Sall indicated that appellant was successfully trained in computer systems and included a grade report with extremely high marks obtained in courses including MS-DOS and applications, basic electronics, solid state devices, digital circuit fundamentals, microprocessors and microcomputer hardware and troubleshooting.

As noted above, the Office must satisfy its burden of proof prior to reducing compensation. The evidence of record establishes that appellant can perform work with restrictions and the Office properly followed its procedures for determining vocational suitability and reasonable availability of the position selected. The Board finds that the Office, having given due regard to the factors specified at section 8115(a) of the Federal Employees' Compensation Act, properly reduced appellant's monetary compensation on the grounds that he has the capacity to earn wages as a user support analyst. The Office has met its burden of proof in this case.

⁵ Federal (FECA) Procedure Manual, Part 2 -- *Claims, Reemployment: Determining Wage-Earning Capacity*, Chapter 2.814.8(d) (December 1995).

⁶ *Albert C. Shadrick*, 5 ECAB 376 (1953).

The decisions dated February 9, 2000 and June 17, 1999 of the Office of Workers' Compensation Programs are affirmed.

Dated, Washington, DC
February 7, 2002

Michael J. Walsh
Chairman

Willie T.C. Thomas
Alternate Member

Michael E. Groom
Alternate Member